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File No. O. Electric./42

Legal **DEPARTMENT**

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Subject:—

Opinions under the

Indian Electricity Act, 1910.

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File No. O. Electric./42

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4/5

Submitted.

The question for the consideration of the R.L.A. is whether the Hubli Electric Company can be prosecuted under sec. 42(b) of the Indian Electricity Act, 1910, for failure to supply energy to consumers. It appears that there have been a number of failures of the supply of energy by the said Company during the past few months. The Asstt. P.P., Dharwar, who was requested to lodge a complaint has expressed a view that the licensee cannot be said to have discontinued the supply; the supply was continued though interrupted. This view is endorsed by the P.P., Dharwar. The Electrical Engr. to Govt. does not agree with that view.

2. A copy of the license granted to the Hubli Electricity Co. has not been forwarded. Clause VI(1) of the Schedule to the Indian Electricity Act, 1910, provides that where a requisition is made by the owner or occupier of any premises requiring the licensee to supply energy, the licensee shall within one month from the making of the requisition supply, and, have in so far as he is prevented from doing so by cyclones, floods, storms, or other occurrences beyond his control, continue to supply energy in accordance with the requisition. Under sec. 42(b) of the Act a licensee renders himself liable to punishment if he discontinues the supply of energy or fails to supply energy in contravention of the provisions of the Act and without reasonable excuse. In this case it appears the supply of energy was interrupted on several occasions during the last few months for periods ranging from half

an hour to about ten hours. The supply has since been continued. The A.P.P.'s view that there is no failure of supply does not ~~appear~~ appear to be correct. It is true that there was no discontinuance or the supply-which may suggest a complete discontanuance, but sec. 42(b) also uses the words "fails to supply energy". It is not clear from these papers why the supply of energy was interrupted. If the failure to supply energy was without reasonable excuse and was for a reason not beyond his control, the licensee would appear liable to prosecution under this section. (Cf. Meares' Electricity, pp. 300-301)

Ed/- D.W.D.
14/1.

S.A.S.

Please see p. 138 of Gangadhariah's Electricity Act, where the cases in which the discontinuance or failure of supply will not amount to an offence under section 42 have been considered. It appears necessary to consider ~~this~~ the terms of the the license and the causes of the discontinuance or failure of supply in the present case before expressing any opinion. P.W.D. may be requested to supply L.D. with a copy of the license and call for a report from the Electrical Engineer to Govt. of the causes of the discontinuance or failure of supply in the present case.

Ed/- R.T.K.
15/1

D.S.

Without knowing all the facts and

Office of the R.L.A.

Without knowing all the facts and circumstances of the particular cases of failure of supply and the causes thereof e.g. whether or not such failure was in fact "in breach of the conditions of his license and without reasonable excuse" it is not possible to say whether the prosecutions now proposed against the Hubali Electric Company will or will not be successful.

2. It may however be stated that as regards the meaning to be attached to "or fails to supply energy" in section 42(b) of the Indian Electricity Act, 1910, the view taken by the Electrical Engineer to Government at page 9 ante appears to be correct. The opinions of the Assistant Public Prosecutor and of the Public Prosecutor, Dharwar at pages 3 an 7 ante seem to refer only to discontinuance of the supply and apparently ignore the fact that section 42(b) also covers failure to supply energy. Interrupted supply implies that during the several periods of interruption there was in fact failure of supply. Failing to supply energy means not being able to supply it without the intention of stopping the supply (see commentary under section 42 (b) at page 138 of Gangadhariah's Electrical Law and Practice in India and Burma, 2nd Impression, 1938 and pages 300-301 of Meares 1941 Edition.).

Sd/- P.N.M.
31/1

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 946, dated the 2nd February 1942.

Submitted.

Attention is invited to Adv. Genl.'s opinion dated 8-11-1941 in which the Adv. Genl. had advised that on the death of the licensee Mr. R.G.Patel, it would be competent to the Govt. to allow the executors in whom the interest in the license has vested to carry on the works pending the assignment of the license by the executors. The R.L.A. is now requested to advise on the question whether the securities deposited by the licensee can be returned and the interest accrued be paid to Mr. C.R.Patel who is one of the executors of the willof the deceased licensee.

2. The securities were deposited by the licensee under clause 1(b) of the Schedule to the Indian Electricity Act, 1910. Under clause 1(c) the securities can be returned on the completion of the works or at such earlier date or dates and by such instalments as may be approved by the Provincial Govt. This would empower the Provl. Govt. to return the securities if Govt. considers that sufficient progress has been made by licensee. The licensee is dead. By this will dated 29th May 1941 the deceased licensee has appointed two executors- Messrs. C.R.Patel and C.V.Patel. Under sec. 211(1) of the Succession Act, 1925, the executor of a deceased person is his legal representative for all purposes and all the property of the ~~deaced~~ deceased person vests in him as such. It has true that under sec. 319 it is the duty of the executor to collect the property of the deceased. The deceased having appointe two executors of his will the property of the deceased vests in both of them. The application for return of the

securities has been made by Mr. C.R.Patel only who has signed for the International Electrical Equipment Co. It does not appear that the application has been made with the consent of the other executor. It would not therefore be advisable to return the securities to Mr. C.R.Patel.

Sd/- D.W.D
15/1.

B.A.S.

I do not agree with Mr. Deshmukh.

Under Sec. 211(1) of the Indian Succession Act, 1925, the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in his as such. Sec. 311 provides that when there are several executors or administrators, the powers of all may in the absence of any direction to the contrary, be exercised by any one of them who has proved the will or taken out administrtion. Clear indication in the will of an intention that the executors must act jointly or by majority or in such other combination is necessary to prevent the operation of this section (see illustration VI). By his will dated 31st May 1941 the deceased licensee Ranchhodlal Gangaram Patel has appointed Messrs. Chandulal Reldas Patel and Chumbhai Vadilal Patel as executors - trustees (see p. 257 ante); but there are no indications in the will of any intention that the executors..

Office of the R.L.A.

In view of the provisions of sections 211 and 311 of the Indian Succession Act, 1925, it is clear that if Mr. C.R. Patel has proved the will and been duly recognised as an executor thereof so as to enable him to give a valid discharge in respect of debts owed to the deceased, there would be no legal objection to returning the securities and paying the interest accrued to him. Otherwise, it will be advisable to make the delivery of the securities and the payment of the interest conditional upon the passing of an indemnity in favour of Government.

Id/- P.N.M.

Remembrancer of Legal Affairs.

Id/-

2-2

U.R. to P.W.D., No. 1021, dated the 4th February 1942.

Office of the R.L.A.

The question for consideration of the R.L.A. is whether the Jalgaon Electric Supply Company has, by making an agreement with the Jalgaon Borough Municipality for supply of energy for pumping water at rates lower than those charged to other consumers for lighting and fans, shown undue preference to the Municipality within the meaning of section 23(1) of the Indian Electricity Act, 1910.

2. Section 22 of the Indian Electricity Act, 1910, provides that except as is otherwise provided by the terms and conditions of a license, every person within the area of supply shall be entitled to a supply on the same lines as those on which any other person in the same area is entitled in similar circumstance to a corresponding supply. Sub-section(1) of section 23 provides that a licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may make such charges for the supply of energy as may be agreed upon, not exceeding the limits imposed by the license. Sub-section(2) provides that no consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force . Under sub-section(4) any charges made by a licensee under clause(c) of subsection(3) may be based upon, and vary in accordance with, any one or more of the four considerations stated therein. It is thus quite clear from the wording of section 23(2) and (4) that the licensee may prescribe different maxima rates for different purposes or conditions as stated therein. It would also appear that even if only a single maximum rate is specified, the licensee can still charge different rates up to that maximum for different purposes, so long as he charges the same rate for any particular purpose to all

applicants ~~applications~~ without undue preference. Unless all the circumstances are similar, viz., amount of energy consumed, expense of supplying it and getting payment, uniformity of demand, the time when the energy is required, etc., agreements may lawfully be made for different terms at different rates (Meare on Electrical Energy in India, 6th Edition, pages 100-101). The P.W.D. has not forwarded a copy of the agreement with the Municipality. In the absence of the agreement and of specific information as to whether the charges for a similar supply to other consumers are the same or different, it is difficult to say whether the rates charged to the Municipality for energy supplied for water-pumping are such as would constitute 'undue preference' within the meaning of section 23(1). It would however appear that the purpose for which the energy was supplied to the Municipality viz. for water pumping was different from that for which it was supplied to other consumers viz. for lighting fans, etc. (Cf. R.L.A.'s No. 3602, dated 1st April 1939). Moreover it is possible that other considerations may also have weighed with the Electric Supply Company in fixing lower rates for the Municipality. Consequently it does not appear, at least on the material now available, that the lower rates charged to the Municipality for supply of energy for pumping water would constitute undue preference within the meaning of section 23 (1) of the Act merely because the charges for such supply are extremely low and unremunerative in comparison with the charges for lighting and fans, etc.

Id/- P.N.M.

3/2

Remembrancer of Legal Affairs.

U.O. to P.W.D., No. 1014, dated the 3rd February 1942.

Submitted.

2. By G.N. P.W.D. No. 1104/36-I dated the 17th December 1940, the Nipani Electric License, 1940, was granted to Messrs. A.D.Baria and N.C.Javeri. These licensees now propose to assign the license and transfer the undertaking thereunder to the Nipani Electricity Co., Ltd., a Company incorporated under the Indian Companies Act,1913, on 27-9-1941 and have applied to Govt. for consent under section 9(2) of the Indian Electricity Act, 1910. There are no Managing Agents of the Company. Under paras. 104 and 106 of the Articles of Association of the said company, the Directors have power to appoint one or more of their body to be a managing directors or directors of the Company and the remuneration of such managing director is to be fixed by the directors. Under clause 10 of the License, an agreement between the Licensee and the Managing Agent requires the previous consent of Govt. It is stated in the P.W.D. note at p. 53 ante that Govt. must have the right to control any remuneration fixed by the company to be paid to the Managing Director.

3. The R.L.A. is requested to state (i) whether the provisions of clause 10 of the License would enable Govt. to control the remuneration of the Managing Director or whether any amendment of the License will be necessary; and

(ii) whether the draft Memo. of consent at pp. 47-48 ante is in order.

4. Question No.1.:- The terms 'Manager' and 'Managing Agents' are defined in clauses (9) and (9A) of section 2 of the Indian Companies Act, 1913. These definitions have been newly introduced by the Amending Act of 1936.

Before that there was no definition of the expression 'Managing Agent'. 'Managers and Managing Agents so often overlap in their functions that a precise line of demarcation cannot be formulated. It is clear that the intention of the Act is, "that in the case of a person to be called the manager, he will be under the control and direction of the directors in all matters, while in the case of Managing Agents, it is possible for the person fulfilling that office, by agreement to be independent of the control and supervision of the directors' in such matters as may be specified in his agreement. The essential characteristics of both are that they are to be in charge of the management of the whole affairs of the company, and so long as they fulfil these requisites they are to be treated either as Managers or as Managing Agents as the case may be, irrespective of the name by which they may call themselves." (See p. 23 of Indian Companies Act by Sirkar and Sen,. In this case the powers and duties of the managing director are laid down in para. 107 of the Articles of Association and it appears that the Managing Director in this case would be a 'Manager' and not a "Managing Agent" within the meaning of those terms in the Indian Companies Act. The fixing of the remuneration of the Managing Director would not therefore be governed by clause 10 of the License and amendment of that clause would be necessary. The license can be amended with the consent or on the application.

R.L.A.'s office.

The draft Memo of Consent at pp. 47-48 ante, as slightly amended, is in order.

2. With regard to paragraph 3 at p. 53 ante, attention is invited to the reply in the similar reference relating to the Dohad Electric Licensee (see R.L.A.'s U.R. to P.W.D. No. 1115, dated 6-2-42.)

Id/- P.N.M.
6-2

Remembrancer of Legal Affairs.

dd/-
6/2

U.R. to P.W.D., No. 1116 dated 6/2/1942.

PRM. 28-4.

Office of the R.L.A.

The draft Memo. of Consent as slightly amended is in order.

2. With reference to paragraph 3 of the P.W.D. note dated 3-12-1941, the reasons for Government insisting upon the right to control the remuneration of the Managing Director of the Company are not clear. The case of a Managing Director is quite different from that of the Managing Agent. Clause 10 of the license provides that the licensee shall not enter into any agreement with Managing Agents, if any, or make any modifications to such agreement already entered into unless with the previous consent in writing of the Government. The words "if any" would seem to indicate that Government only desired to reserve to itself the right to control the remuneration of the Managing Agents if appointed by the Company. Government had apparently no intention to interfere with the management of the Company if the Company were managed by the Directors only. A Managing Director is under the control and supervision of Directors in all matters and his appointment terminates if from any cause he ceases to be a Director. His remuneration is almost invariably reasonable inasmuch as it is not in the interests of the Company to pay him an unduly high salary; whereas in the case of Managing Agents, it is common knowledge that they often exact exorbitant terms and arrange by agreement to be independent of the control and supervision of the Directors in such matters as may be specified in the agreement which is usually one-sided. It is the policy of Government not to encourage the system of managing Agency in a public utility concern and it is in order to put a check on this system that sections 87A to 87I have recently been added to the Indian Companies Act. In the light of these remarks the P.W.D. is requested to reconsider whether a good and sufficient case has been made out f

modifying clause 10 of the license, If it is still desired that control over the remuneration or other terms of appointment or agreement, if any, even in the case of a Managing Director should be taken by Government, suitable amendment of the terms of the license would be necessary.

3. The same remarks are applicable to the Nipani Electric License case.(See R.L.A.'s U.O.R. to P.W.D. No. 1116 dated 6-2-1942).

Id/- P.N.M.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No., 1115, dated the 6th February 1942.

PSM. 28/4.

Office of the R.L.A.

The view taken by the Electrical Engineer to Government at p.8 ante and accepted by F.D. at p.9 ante is correct.

2. Bombay Act XVII of 1939 is the Bombay Finance (Second Amendment) Act and this Act does not in any way modify Part II relating to Electricity Duty in the Bombay Finance Act, 1932. F.D. Notification No. 9326-A(2), dated the 31st March 1939 has been issued under clause (a)(2) in the First Schedule as last amended by Bom. IV of 1939 which came into force on 31st March 1939(see section 1(2) of Bom. IV of 1939). The current modifications in the First Schedule as well as the deletion of exemption 7 in the Second Schedule ~~as xmit as the deletiax~~ to Part II were both ~~x~~ carried out simultaneously by Bom.IV of 1939, section 3 sub-sections (6) and (7). The assumptions underlying the endorsement of the District Magistrate, Satara at p.8 ante are therefore not correct.

Id/- P.M.M.
14/2
Remembrancer of Legal Affairs.

U.R. to F.D., No. 1372 dated the 16th February 1942.

PSM. 28/4

R.L.A.'s Office.

The view taken by the Electrical Engineer to Government in his letter at p. 5 ante that the method of charge referred to in section 23(3)(c) of the Indian Electricity Act, 1910, cannot exceed (i.e. increase) the maxima rates laid down in the license, appears to be correct. Section 23(3) relates only to the methods of charging and does not in any way control or modify the terms as to the limits of price to be charged in respect of the supply of energy prescribed in the license under section 3(2)(d). Such limits laid down in the license are also not modified by any conditions sanctioned under section 21(2) which provides that these conditions should not be inconsistent with the Act, or with the license etc. (Cf. Advocate General's opinion No.31, dated 13th August 1940, accompanying R.L.A.'s U.R. to P.W.D. No. 7441 dated the 19th August 1940). The concluding portion of paragraph 3 of the P.W.D. circular letter No 872/27-M, dated the 19th May 1936, cannot be constructed to permit charging of rates in excess of the limits of price prescribed in the license. The last sentence in that letter must be construed as follows:- The rates to be charged should in no case exceed the maxima sanctioned in the license or permit granted to the supply company or the rates which may have already been sanctioned in the conditions of supply, whichever of these two may be lower. The conditions in question cannot indirectly amend the license by increasing the maxima rates specified in the license.

Id/- P.N.M.
5/3

Remembrancer of Legal Affairs.

U.R. to P.W.D., No.,2008 dated the 6th March 1942

It appears that the Bombay(Hydro Electric) License, 1907 was granted by the Government of Bombay under the Indian Electricity Act, 1903 to Dorabji Jamsetji Tata and Ruttonji Jamshetji Tata for the supply of energy within the City and Island of Bombay as described in the first Annexure - Clause 14 of the license provides that the option of purchasing the undertaking accorded to the Corporation and the Local Government by section 7 of the Act shall be exercisable at the end of the period of 22 years computed from the commencement of the License etc. It appears that after the license was granted the area of supply has been extended from time to time, the present area as described in the first Annexure being (1) the area contained within the limits of the City of Bombay as defined by section 3(10) of the Bombay General Clauses Act. 1904, (2) the whole of that portion of the Island of Salsette, as is bounded on the South by the Town and Island of Bombay, and on the North by the Bassein and Thana Creeks, (3) the area contained within a circle of eight miles radius round the Tata Power Company's Sub-section near Kalyan, (4) the area contained within the Municipal limits of Matheran in the Kolaba District (5)the area contained within the limits of the Municipal Borough of Lonavla in the Poona District,(6) the area contained within the Municipal limits of Panvel in the Kolaba District, (7)the area contained within a circle of ten miles radius round the ~~Headquarters~~ headquarters of the Collector of Poona in the Poona City

The question for the consideration of the R.L.A. is whether in view of the subsecuent extension of supply to areas beyond the Municipal limits of Bombay, the option of purchase exercisable by the Municipal Corporation of Bombay under clause 14 of the license is inoperative.

The license granted in the present case under the Indian Electricity Act, 1903 is deemed to have been made and granted under the Indian Electricity Act, 1910, . Section 7(1) of the Electricity Act, 1910 which replaces section 7 of the Electricity Act, 1903, inter alia provides that where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall have the option of purchasing the undertaking. Since however the area of supply has in the present case been extended beyond the Bombay Municipal area by amendment of the license under section 4(3)(h) and different local authorities exist for the area now comprised in the amended first Annexure to the license, section 7(1) will have no application. Since the whole of the area of supply is not included in the area for which a single authority is constituted, the proper provision applicable in the present case would be clause (b) of sub-section (2) of section 7 so that the Provincial Government alone would have the the option to purchase the undertaking and the

Bombay Corporation can have no option of purchasing the undertaking by virtue of any statutory provision. The Corporation has evidently no locus standi for the exerci of such option under clause 14 of the license as apart from the statute, since the Corporation is not a party to the license, although clause 14 is saved by provision of section 58(2) of the Electricity Act, 1910.

As regards the undertakings covered by the Nila Mula Valley (Hydro-Electric) License, 1921 and the Andhra Valley (Hydro-Electric) License, 1919 the option to purchase under clause 14 of the respective licenses is exercisable by Government and not by any Local Authority.

Id/- P.N.M.
1/4

Remembrancer of Legal Affairs.

PSM. 30/4.

Office of the R.L.A.

Under section 54 of the Indian Electricity Act, 1910 sums recoverable under certain provisions of the Act can be recovered on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by distress and sale of any moveable property belonging to such person. Since the provision does not state that the sums are recoverable as fines, rules made under section 386(1)(a) Criminal Procedure Code prescribing the P procedure for distress and sale of moveable property to recover the fines will not apply unless they are specifically made applicable. Section 37(1) of the Indian Electricity Act provides for power of the Central Electricity Board to make rules to carry out the purposes of the Act. To prescribe the procedure to be followed by the Magistrate in recovering the sums by distress and sale of moveable property would be a purpose of the Act. There is therefore no legal objection to making a rule under section 37(1) specifying that the rules made under section 386(1)(a) Criminal Procedure Code and the form of warrant (XXXVII) prescribed in Schedule V to the Criminal Procedure Code shall mutatis mutandis apply to the recovery to be made by the Magistrate under section 54 of the Indian Electricity Act.

Id/- P.N.M.
14/5

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 4068, dated the 15th May 1942.

P.S.M. 30/4.

It appears that the Tata Power Company, Limited, have installed an additional 1000 K.V.A. single phase transformer at the Poona Electric Supply Company's Receiving Station and brought it into use without the previous approval of or inspection by the Government Inspector. The question is whether this action on the part of the Tata Power Company constitutes a breach of any of the clauses of rule 62 of the Indian Electricity Rules.

2. Rule 62 runs as follows:-

"62. Approval of high pressure supply:-
(1) No licensee or non-licensee shall deliver a high pressure supply to any person, other than a distributing licensee except with the approval in writing of an Inspector, and subject to such conditions (if any) as such Inspector may think reasonable and proper in the circumstances, and the owner shall not bring the installation into use until it has been inspected by Inspector or other officer appointed to assist an Inspector

(2) Where energie to be used by an owner at high pressure the owner shall not bring the installation into use, except with the approval in writing of an Inspector and subject to such conditions (if any) as he may think fit.

(3) When the position of a high pressure motor or other apparatus is changed, notice shall forthwith be given to the Inspector showing the extent and nature of the change of position.

(4) The owner of any high Pressure installation who makes any such alterations in, or additions to, the installation as effect the supply shall not utilize the alterations or additions for the purposes of supply unless and until they have been approved by an Inspector."

It is the contention of the Tata Power Company that there has been no breach of rule 62 for the reason that sub-rule (1) has no application to a bulk licensee delivering high pressure supply to a distributing, licensee and rules (2), (3) and (4) are intended to apply only to consumers and not to licensees. The Government Inspector is of a different opinion and though conceding that sub-rule (1) would not cover the present case, he holds the view that bulk licensees as well as distributing licensees and consumers come within the scope of sub-rules (2), (3) and (4) as owners of high pressure installations and appliances. The question referred to the R.L.A. for consideration is whether the expression "owner" as used in the sub-rules of rule 62 is intended.

to cover all owners of high pressure installations or has relation only to consumer owners and not to licensee owners of such installations.

3. The recognised rule of interpretation is that in the absence of any definition an expression used in any section or rule must bear the same meaning throughout unless a different meaning can be gathered from the context. It is clear from the provisions of the Indian Electricity Act and the Rules framed thereunder that a high pressure installation can be owned by the bulk licensee, distributing licensee or the consumer. The Rules framed under the Act contain a number of provisions which impose a definite obligation on all owners to take precautionary and safety measures in respect of the high pressure apparatus and appliances owned by them. In many of these rules the expression "owner" has been used in its general sense and is intended to cover bulk and distributing licensees as well as consumers (vide rules 50,55,56,61, 63, 64).

4. Coming now to rule 62, subrule(1) places a bar on a licensee or non-licensee from delivering high pressure supply to any person other than distributing licensee without the previous approval of the Inspector and on the owner from bringing the installation into use until it has been inspected by an Inspector. The expression "owner" used in the latter part of this sub-rule, if read in its context, might quite conceivably refer to the licensee or non-licensee delivering the high pressure supply and not to the consumer. But it can also be argued that whereas the first part of this sub-rule deals with delivery of high pressure supply the second part deals with bringing high pressure installation into use and that therefore the expression "owner" would cover not only the licensee owners who use installations for high pressure supply but also consumers who set up installations for receiving such supply. Sub-rule (2) provides that where energy is to be used by an owner at high pressure the owner shall not bring the installation into use except with the approval in writing of an Inspector etc. Read in its context the term "owner" here presumably refer to the consumer who uses ~~the~~ uses the Energy but it may in certain circumstances also refer to the bulk or distributing licensee if the high pressure supply is used by him for running his own motors etc. Sub-rule (3) is worded in the passive and provides that the position of a high pressure motor or other apparatus is changed, notice shall forthwith be given to the Inspector showing the extent and nature of the change of position. This sub-rule would, it seems, apply to all owners of high pressure motor or other ~~that xx~~ apparatus, and there is nothing in the language to suggest that ~~xx~~ it has application only to consumers. Sub-rule (4) provides that the owner of any high pressure installation who makes such alterations in, or additions to, the installation as affect the supply shall not utilise the alterations or additions for the purposes of supply unless and untill they have been approved by an Inspector. Read in its context, the expression "owner" in this subrule would appear to refer to the bulk or distributing licensee who ~~a~~ applies the energy. It is therefore clear that having regard to the context in which it is used, the expre-

the expression "owner"in the sub-rules of rule 62 cannot throughout be constructed to refer to the consumer owner only.

5. On the facts as can be gleaned from the correspondence the Tata Power Company, Limited, cannot, it seems, be held to have committed a breach of sub-rule (1) inasmuch as it is not incumbent on a bulk licensee to seek the approval in writing ~~xx~~ of an Inspector before delivering a high Pressure supply to a distributing licensee. It would appear from the correspondence that this position has been conceded by the Electrical Engineer to Government. Sub-rule 2 (2) will have no application to the facts of the present case as it presumably refers to the consumer owner and not to the bulk licensee. Nor will sub-rule(3) have any application unless it is definitely established that the addition of the transformer, has in effect changed the position of the high pressure installation. As regards sub-rule (6), the Company will be liable for its breach if it is established that the addition of the transformer has affected the supply in any way.

Id/- P.N.M.
11/5

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 3708, dated the 5th May 1942.

Office of the E.L.A.

The Tata Power Company, Limited, who are bulk suppliers have installed a 1,000 K.V.A. single phase transformer, connecting it up with the existing two 1,000 K.V.A. transformers, and also increased the capacity of the installation from 2,000 K.V.A. approximately to 3,000 K.V.A. approximately. The Electrical Engineer to Government wishes to know whether a fee of Rs. 275/- can be levied for inspection of the transformer under scale 'B' of Government Order No. 6617/27, dated the 10th July 1933.

3. Rule 2 of the above Order provides for the levy of fees. Sub-rule (3) of that rule obviously does not apply to the present case. Sub-rule (2) deals with initial inspections, examinations, or tests and provides that fees shall be levied in accordance with scale 'C' and Scales 'E' to 'G'. The apparatus or installation in this case does not fall within any of those scales and therefore the second sub-rule has no application. Sub-rule (1) remains It prescribes fees for periodical inspections, examinations or tests. The inspection of the newly installed transformer in this case would be an initial inspection and therefore sub-rule (1) would not apply unless the transformer were to be regularly examined, beginning from the time of its installations But it is understood that the new transformer will not be periodically inspected separately. When first installed, it was inspected separately and thereafter it will be inspected periodically as part of the whole installation. The periodic inspection is of the whole installation and not only of the new transformer. The installation of the new transformer does not begin a series of perfodic examinations. Further, it is understood that this whole installation is inspected yearly and a fee charged for this periodic inspection. It is clear from rule 2, of the Levy of Fees Rules that fees cannot be charged more than

once a year except in cases provided for in the proviso to that rule. The whole installation in this case was inspected this year and a fee charged. Next year a similar inspection will be made and a fee charged. It therefore appears that the inspection of the new transformer is not one in the series of periodic inspections, but an initial inspection or an inspection subordinate to the periodic inspections. The proviso to rule 2 provides in certain cases for levy of fees within a period of twelve months after the date of the first inspection. That proviso is as follows:--

'Pprovided that, in the case of a second or subsequent, inspection, examination or test made within a period of twelve months from the date of the first inspection, examination or test,---

(a) no fee shall be levidd if such second or subsequent inspection, examination or test does not involve any extention to the installation or is not, in the opinion of an Electric Inspector necessitated by the neglect or failure of the licensee or owner to carry out within a stipulated time any written order of an Electric Inspector; and

(b) one-half of the fee prescribed in the said scales "A" to "D" shall be levied in cases other than those provided for in clause (a)".

In this case there was an inspection a few months before the installation of the transformer and on the installation of the new transformer there was another inspection. But it is understood that that inspection was only of the new transformer and not of the whole installation. Presumably, the words "second or subsequent inspection" in the rule mean "second or subsequent inspection of the same installation". There has been no such second inspection in this case and therefore no

fee can be charged under the proviso. The result is that under the above Order a fee in this case cannot be charged at all.

Id/- P.M.M.
21/5

Remembrancer of Legal Affairs.

U.R. to, P.W.D.,No. 4230, dated the 22nd May 1942.

PSM. 30/4

Office of the R.L.A.

One Mr. K.M.Shah owns an electricity generating set for the purpose of running his flour mill at Baramati. Mr. Shah supplies energy to a local cinema known as "The Shyam Talkies" and also to a "panapatty shop" and "hotel" located in the cinema premises. It appears that Mr. Shah and one Mr. Karandikar are partners in the"Shyam Talkies", and in pursuance of the partnership agreement Mr. Shah has agreed to allow the use of his Blackstone oil engine free of any hire to drive the dynamo belonging to the Cinema in exchange for the goodwill valued at Rs. 500/-. The Electric Engineer states that the "panapatty shop" and"hotel" which are hired by third parties appear to be primarily intended to cater for the persons attending the Cinema. On these facts the R.L.A. is requested to advise whether Mr. Shah and the Shyam Talkies can be said to be "engaged in the business of supplying energy" within the meaning of section 28 (1) of the Indian Electricity Act, 1910.

2. Under section 28(1) of the Indian Electricity Act, 1910, no person other than a licensee shall engage in the business of supplying energy except with the previous sanction of the Provincial Government. The phrase "the business of supplying energy" used in section 28(1) is not capable of exact interpretation. It may be pointed out that the decision of the Provincial Government upon it is final under sub-section (2) of section 28. The decision would perhaps be arrived at mainly on the grounds of public convenience. It has been held in the United Kingdom that a"person" is only supplying energy to the public when that is his chief business and the sale of surplus power from a private generating station serving a factory would not be of this nature. Provincial Governments appear to differ and the matter has not been before the Courts. Gangadharia and Ferro in their Indian

Electricity Act, first edition, at page 105 observe. "It is not always easy to determine whether a particular case of supplying energy comes within the scope of 'engaging in the business of supplying energy'. A person may install a generating set for supplying himself with electricity and in such a case no sanction of Government is required under section 28 (1). He may also supply surplus energy that may be available with him to one or more neighbours of his. Even then, he cannot be regarded as engaging in the business of supplying energy'. The question may be asked as to what would happen if the supply were made by him to the neighbours at a rate calculated to leave margin of profit to him. Even then, it would be difficult to imagine that the person is engaged in the business of supplying energy. The sole criterion in such cases ought to be whether the supply has been started or run for the purpose of making a profit". Applying this test to the facts of the present case it appears that the supply of energy to the "panpatti shop" and"hotel" in the premises of the Shyam Talkies is more for the convenience of the visitors of the theatre than for the purpose of making profit. Consequently it does not seem that Mr. Shah can reasonably be said to be engaged in the business of supplying energy within the meaning of section 28(1) of the Indian Electricity Act.

Id/- P.N.M.
10/6.

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 4815, dated the 11th June 1942.

PSM. 30/4.

Office of the R.L.A.

By Government Resolution, Public Works Department, No. 3398/36, dated 10th October 1939, the Provincial Government had constituted an Electricity Advisory Board under section 35 of the Indian Electricity Act to enquire into and advise Government (under clause XI of the Schedule to the Act) what alterations, if any, should be made in the maxima rates for the supply of electrical energy fixed by the following licensees:-

(1) The Panwal Taluka Electric Licensee.

(2) The Lonawla-Khandala Electric License.

(3) The Ahmedabagar Electric License.

(4) The Jalgaon Electric License.

(5) The Belgaum Electric License.

(6) The Dhulia Electric License.

2. The Board has now submitted its recommendations to Government and the question is what action should be taken in regard to them. A(F) in his minute dated 3rd July 1942 observes that it would be undesirable to introduce the reductions indicated by the Board and has suggested the following alternative courses.

(a) Whether Government should now accept the Board's recommendations but refrain from putting them into force till better times come; or

(b) Whether Government can just sit on the Board's reports and pass no orders accepting or rejecting them until better times when Government could accept its recommendations and put them into force.

3. A(F) considers alternative (a) a dubious proceeding and alternative (b) may be vitiated by changed post-war conditions. The R.L.A. is requested to advise what would be the safest course to

adopt in the circumstances.

4. Under clause XI of the Schedule to the Indian Electricity Act, 1910, the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved by the Provincial Government, such maxima as the Provincial Government shall fix approving the method. The first proviso to this clause lays down that if at any time after the expiration of seven years from the commencement of the license, the Provincial Government considers that the maxima so fixed or approved as aforesaid should be altered, it shall refer the matter to an Advisory Board, and, if the Board recommends any alteration, may make in order in accordance with such recommendation which shall have effect from such date as may be mentioned therein. The second proviso provides that where an order in pursuance of maxima fixed thereby shall be made until the expiration of the foregoing proviso has been made, no further order altering the another period of five years. The word "may" in the first proviso indicates that it is entirely within the discretion of Government to pass or refuse to pass an order in accordance with the recommendation of the Advisory Board even if the Board recommend any alteration of the maxima. When a Board submits its report, four courses are open to Government, Viz.---

(1) to postpone consideration of the recommendations until better times,

(2) to accept the Board's recommendations and pass orders after the lapse of a reasonable time,

(3) to reject the recommendations in toto, or

(4) to take no action on the recommendations on the ground that Government does not consider the time opportune for revision of maxima rates.

5. There is nothing in clause XI which expressly debars Government from postponing consideration of the report until

better times. But if these better times are a long way ahead in the nebulous future the Board's recommendations would in all probability be completely out of date and it would hardly be appropriate to adopt the maxima rates which bear no relation to post-war conditions. If the second course is adopted, Government, it would seem, cannot refrain from issuing orders in accordance with the recommendations made. It is true that no time limit is prescribed for considering these recommendations and passing orders. But it is manifest that orders must issue within a reasonable time if they are to be effective. The first proviso no doubt enables Government to make an order in accordance with the Board's recommendations which shall have effect from such date as may be mentioned therein. But, for obvious reasons, it would not be desirable for Government to introduce the maxima recommended by the Board with effect from a date too far ahead as by then they are likely to be out of tune with the prevailing conditions. Such a course is also likely to lead to another difficulty. The second proviso fixes a period of five years within which no further change in the maxima is to be made. The question would arise whether that period is to be computed from the date of the order or from the date on which such order is to take effect. On a literal interpretation, the period would appear to commence from the date of the order. If, for example, the order provided that the new maxima should come into effect two years later, these new maxima, it seems, be changed after a period of only three years instead of five. That would seem to be contrary to the intention of the second proviso and be another argument for the view that a long interval should not be allowed between Government's consideration of the recommendations and the date of bringing the new maxima into force.

6. The third and fourth alternative ought to present no diffi-

difficulty. It is open to Government to reject the recommendations in so many words or to shelve them permanently. While adopting either of these courses Government may, if it so desires, indicate that though it approves of the principles underlying the recommendations it does not consider the x time opportune for altering the existing maxima. If the recommendations are shelved, it would be inadvisable to resuscitate them after the lapse of a certain period. If the question of changing the maxima is again to be considered, a new reference to the Board would be necessary.

Id/- P.N.M.
29/7

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 6182, dated the 30th July 1942.

PSM. 30-4.

Office of the R.L.A.

With reference to the Electrical Engineer to Government's letter No. LRM. 11/950, dated 19th June 1942, it may be noted that R.L.A. did not express in his former opinion any definite view about the advisability of launching a prosecution. He merely stated that without further facts it was impossible to express an opinion on that point. R.L.A. did express as a the opinion ax that interruption of supply might amount to a failure to to supply within the meaning of section 42(b) of the Electricity Act. The fact that the Public Prosecutor took a different view on that should not in itself have prevented the Electrical Engineer from instituting a prosecution. The R.L.A.'s opinion is of higher authority and would ordinarily be preferred to that of a District Government Pleader, although in all cases the decision whether or not to institute a prosecution is in the descreation of the Administrative Department concerned.

2. A temporary break down and consequent discontinuance of supply will not bring the Company within the scope of rule 28 unless such break-downs are of frequent occurence and due to old or defective plants. It is not known whether the discontinuance of supply in the present case was sudden occurence so that it might be called a case of emergency within the meaning of rule 28.

3. The proviso to rule 28 which provides for discontinuance of supply under certain circumstances is not an independent provision and it has to be read with rule 28. Consequently it appears that the discontinuance of supply except under circumstances specified in the proviso would amount to a variation in the pressure of supply within the meaning of rule 28. It appears therefore that in cases where there is a complete break-down in the supply of energy whereby the voltage and frequency go down to zero, it amounts 100 per cent variation in the declared pressure

and frequency of supply to consumers and there would be a breach of rules 28 and 29 if such break-downs are of frequent occurence and due to old or defective plants.

Id/- P.N.M.
1/8

Remembrancer of Legal Affairs.

U.R. to P.W.D.,No. 6302 dated the 3rd August 1942.

PSM. 30/4.

Submitted.

This relates to the notices given by Mr. Surjansingh B. Suraj, an Electrical Contractor of Hubli threatening to file a suit against the Govt. of Bombay for a declaration that the order of the Licensing Board cancelling the contractor's license and suspending his supervisor's permit for one year is illegal and for recovery of Rs. 3330/- as damages caused to him as a result of this order etc. As certain malpractices committed by Mr. Surjansingh had come to the notice of the Electrical Sub-Inspector at Belgaum, he investigated the entire case and referred the same to the Licensing Board for their consideration and necessary action. The Licensing Board after going through the papers and investigating the case carefully came to the conclusion that he had permitted a wireman by name Pillay to carry out wiring works on his behalf without his direct supervision and in contravention of Rule 48 of the Indian Electricity Rules 1937 and that he had even furnished test reports for such work without carrying out the testing work himself. The Board therefore cancelled the contractor's license and suspended his supervisor's permit for one year under rules 26 and 35A read with rule 3(6) of the Rules and conditions prescribed by Govt. for issuing certificates of competency under Rule 48 of the Ind. Elec. Rules, 1937 (G.R.P.W.D.,No. 620/36-I, d/28-8 41). It is also proposed to prosecute wireman Pillay under rules 123 of the Ind. Elec.Rules 1937 for having carried out electric installation work in contravention of Rule

Rule 48 of the Rules. The papers are merely shown

u.o. to ~~X~~ the R.L.A.

4. The papers may be seen and returned. I A

Sd/- P.S.Nadkarni.
8-8

A.S.

A. may be done.

Sd/- R.T.K.

8/8

~~XXXXX~~ A.L.R.

Sd/- P.S.M.

10/8

R.L.A.

Sd/- P.N.M.

10/8

U.R. to P.W.D.,No. 6533 dated the 12th August 1942.

P.S.M.30-4.

Submitted.

Please see Govt. letter (P.W.D.) at p. 296ante. On the revocation of the Kapadvanj Electricity license, the licensee was informed that under section 5(f) of the Indian Electricity Act, 1910, he had the option of disposing of all lands, buildings, works etc. belonging to the undertaking in such manner as he thought fit, but that if he did not exercise this option within a period of six months Govt. would cause the works to be removed themselves and recover the costs of such removal from him. The licensee now says that it is proposed to take the company into voluntary liquidation, and applies for extension of that period till the liquidation is completed. The Electrical Engineer to Govt. proposes an extension of three months. The question for the consideration of the R.L.A. is whether there is any legal objection to granting the proposed extension.

There is no legal objection to granting an extension of time as recommended by the El. Engr. to Govt. in his endorsement at p. 339 ante.

Sd/- D.W.D.
7/8/42

A.S.
Reply may be as at A

Sd/- R.T.K.
8/8

A.L.R. 'A'
Sd/- P.S.H.
11-8

R.L.A.
Sd/- P.N.M.
13-8

U.R. to P.W.D. No. 6665 dated the 17-8-42

Office of the R.L.A.

Seen and returned. The view expressed in para. 5 of the P.W.D. office note at p. 77 ante is correct. There appears nothing in the file to justify the applicant's statement at p. 73 of the file that he has made some purchase of equipment for the purposes of this license at the instance of Government. It is presumed that statement is without foundation.

Id/- P.N.M.
21/8/42

Remembrancer of Legal Affairs.

U.R. to the P.W.D., No. 6863 dated the 21st August 1942.

R.I.No. 7267
22-7-1942.

An application for the grant of the Pen Electric License was made in 1940 by Messrs. Limaye Bedekar & Co. The application was published in the newspapers and in the Bombay Government Gazette. But the draft license was neither settled by the Electrical Engineer to Government nor offered to the applicant company. (vide the P.W.D. notes at pp. 75-76 ante.). Consequently the proceedings had not reached a stage in which Govt. could not have refused to grant the licence. No liability is incurred by the Provl. Govt. in refusing to grant the license. The attention of the P.W.D. may be invited to the opinion in the linked case.

Sd/- D.W.D.
14-8-42

A.S.

I agree.

Papers may be seen and returned.

Sd/- R.T.K.
15/8

A.L.R.

Id/- P.N.M.
21/8

R.L.A.

PSM. 1/5

Office of the R.L.A.

On 27th August 1941 Mr. B.D.Desai, an applicant for an electrical licence was informed that Government would accept a reduced deposit of Rs. 5,000/- and grant the licence to him on his showing to the satisfaction of the Electrical Engineer to Government that he had purchased all the plant and machinery required for the scheme. Mr. Desai has since paid the amount of the deposit and secured part of the machinery required for the undertaking,. He has not yet been able to purchase some engines and copper wires. In view of the instructions received recently from the Government of Indian that licensees should ordinarily be refused, the question has arised whether the licence should be granted to Mr. Desai. The question raised by the P.W.D. for the consideration of the Remembrancer of Legal Affairs is whether there would be any "undue legal liability" on the Provincial Government if the grant of the licence is refused to Mr. Desai and the licence fee and the deposited amount returned to him.

2. Mr. Desai seems ready to dispute the statement in the P.W.D. notes that he has not purchased all the plant and machinery required for the scheme. See his letter dated 15th February 1942 at p. 131 of the file. If it be true that he has carried out all the conditions including purchase of the requisite machinery, then Government would incur legal liability by refusing to grant him a licence at this stage. But it is presumed that as stated in the P.W.D. notes, he has not purchased all the machinery and plant required and has therefore so far failed to fulfil one of the conditions prescribed by Government for the grant of licence. Can Government then without incurring legal liability refuse to grant a licence? Government's conditional

promise to grant a licence was made about a year ago. No time limit was prescribed for the fulfilment of the conditions. Normally a year would seem ample for the purchase of the necessary plant and machinery. But in the present conditions of war perhaps a longer time is required,. So far Mr. Desai has not asked for further time to complete his purchases. His contentions is that he has purchased sufficient machinery. But that would not prevent him contending in court that he has not been given sufficient time in the abnormal conditions of the war to obtain the necessary machinery. There is no doubt that Government's promise has involved him in the purchased of some machinery. In these circumstances, it is doubtful whether the result of litigation would be in Government's favour, and it seems advisable to grant Mr. Desai a suspended license or to arrive at some amicable agreement with him.

Id/- P.N.M.
11-9

Remembrancer of Legal Affairs.

U.R. to the P.W.D., No. 7326 dated the 12th September 1942.

PSM. 1-5

L.D. 2947
17-9-42

Submitted.

2. The Dakore-Umreth Electric Licence, 1940 was granted to Mr. B.D.Desai on 1-3-1940 who assigned to the Dakore-Umreth Electric Co. Ltd., with the consent of "Gov.. Under clause 5 of the license, the Co. is required to complete the works and to commence the supply of energy within a period of 18 months i.e. 1st September 1941. As the works were not completed in time the Co. applied to Govt. for extension of the period for completion of works, which was granted for six months (p. 65). The licensee (CO.) thereafter requested Govt. to extend the period further by about 6 months (p.79) and to permit it to commence supply at Dakore where the works were completed.)p. 91). Govt. has extended the perio for completion of works until 3 years after the termination of the war (p. 107) but it does not want to permit the licensee to commence supply of energy to Dakore since all the works have not been completed in the Municipal district of Umreth. The P.W.D. is also of the view that as the grant of permission under the second proviso to clause 7(A) of the licence to commence supply of energy to a portion of the area of supply solely depends on the express permission of the Electrical Engineer to Govt., whose decision in the matter is final, there is no legal objection to refusing such permission. The question for the consideratio of the R.L.A. is whether Govt. can refuse permission to the Dakore-Umreth Electric Co. to commence supply of energy to a portion of the area of supply namely,:-

Dakore where the works have been completed but all the works in the rest of the "area of supply" are not completed.

The view taken by the P.W.D. in its office note dated 11-9-1942, at p. 114 ante is correct. | A

U.R. to P.W.D. No. 7842, dated the 28-9-42.

Id/- P.S.Nadkarni
19/9

Reply may be at "A"

Id/- R.T.K.
24/9

A.L.R.
Id/- R.S.H.
25-9

R.L.A.
Id/- P.M.M.
25/9

~~Remembrancer of Legal Affairs.~~

~~U.R. to P.W.D., No., 7842, dated the 28-9-42~~

PSM. 1-5

Office of the R.L.A.

The Remembrancer of Legal Affairs sees x no reasons to modify the view taken by him in his opinion No. 4068, dated the 15th May 1942. Since however the Government of India doubt if a rule could be validly framed under section 37(1) of the Indian Electricity Act, 1910, as suggested by the R.L.A. the position may be allowed to continue as it is and the Magistrates may be instructed to x issue distress warrants under section 54 in the form prescribed under the Criminal Procedure Code for the recovery of fines until there is a High Court decision to the contrary.

Id/- P.H.M.
15/10
Remembrancer of Legal Affairs.

U.R., to the P.W.D.,No., 8356 dated the 15th October 1942.

PSM. 4/5
4C.

9971
1979

Submitted.

2. The Yeola Electric Supply Co. Ltd., was granted a licence to supply electric energy to the town of Yeola on 29th March 1941. The Solicotors of the Coy. now state that the assets and properties of the said licensee existi g and future have been mortgaged to Mr. Kantilal Mannohandas and others by an Indentu re of Debenture Trust Deed, dated 4-2-42 without the previous consent of Govt. as required by section 9(2) of the Indian Electricity Act, 1910 and that the debenture holders have already advanced a loan or Rs. 1,75,0 0/- to the Company on the security of the assests. The Solicitors now ask for Govt.' consent as the failure to obtain consent before the mortgage was due to ignorance of the provisions of the law and in the absence of a consent the transaction will be considered as void and the debenture-holders will be deprived of their security and if they enforce immediate payments of the loan advanced, the Co. will have to go into liquidation. The P.W.D. is of the view that having regard to the provisions of the section 9(2) and (3) it is doubtful whether the consent applied for even if given, will validate the transaction. The question for consideration of the R.L.A. is whether the transaction of mortgage of the assets and properties of the Yeola El. Supply Coy., can be validated by Government granting its consent now under section 9(2) of the Indian Electricity Act. 1910.

PSH. 4/5

4C

Office of the R.L.A.

The mortgage is void as pointed out in the P.W.D. note at page 53 ante and it does not seem that ex post facto sanction of Government would validate it unless it was made subject to such sanction (see section 9(3) of t the Electricity Act, 1910).

Id/- P.N.M.
15/10

Remembrancer of Legal Affairs.

U.R. to P.W.D.# No. 8357, dated the 15th October 1942.

PSM. 1-5

Submitted.

2. The Manmad Electric Supply Co. Ltd. was granted licence on 3-9-1936. The Solicitors of the Company now state that the assets and properties of the licensee company existing and future have been mortgaged to Mr. Kantilal Manmohandas and others by an Indenture of Debenture Trust Deed dated 26-5-42 without the previous consent of the Provincial Government as required by section 9(2) of the Indian Electricity Act, 1910 and that the debenture holders have already advanced Rs. 75,000/- to the company on the secretary of the assests.

3. As the facts in this case are analogous to those in the linked file 6112/36, the reply in that case will apply in the present case also.

Sd/- P.S.Nadkarni.
29-9

S.A.S.

Id/- R.T.K.
30-9

U.R. to P.W.D., No., 8357-A, dated the 15th October 1942-.

Dharwar Borstal School had installed service connection or lines for two electric pumps, but it was found that only one pump was required. The Inspector General of Prisons therefore proposed to the Dharwar Electric Supply Co., Ltd.. that the service line for the other pump should be dismantled and sold to the Company. The Company replied that under its conditionsof supply it could not dismantle the service line and further that the service line was their property and not the consumer's. The matter is referred to the R.L.A. for his opinion..

2. The question seems to be chiefly regarding the ownership of the service line. On the consumer's requesition such a line is to be laid down in accordance with the provisions of clause VI of the Schedule to the Indian Electricity Act, 1910. The licensee is to pay for the first 100 ft. from the licensee's distributing main and the consumer, if required, is to pay for the rest. Sub-clause(2) of that clause provides that the licensee shall maintain the whole line notwithstanding that the consumer has paid for part. That clause does not determine the ownership of the line, nor does there appear to be any provision of the Act or Rules thereunder which specifically settles that question. Nor has it been decided in the courts of India. See the note at pp. 325-26 of Meares 6th Edition of the Electricity Act: "The limited extent of the licensee's responsibility in this provision (sub-clause (2) of clause VI) implies, in the Author's opinion, that the licensee is not responsible for, and may not interfere with, a consumer's private wires (aerial or otherwise) except in so far as he may be authorised to do so elsewhere in the Act; see sections 14,15,20, 21, 24 and 25. The ownership of a service-line on a consumer's premises has not been judicially decided in India, and legal opinion tends to vest it in the consumer who pays for it, rather than in the licensee who erects and maintains

it". See also the note at p. 188 of Gangadhariah & Ferros' Electrical Law, 2nd Impression.

3. The note to condition 4 in the Dharwar Electric Supply Co.'s conditions of supply, however complicates this case;

"The service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the linensee by whom it is to be maintained."

These conditions of supply will have been sanctioned by Government under section 21(2) of the Act. Sub-section (2) provides that the conditions are not to be inconsistent with the Act or with the license or with any rules under the Act. As explained above, it is doubtful whether the Act, or the Rules thereunder justify the Company's claim to own the whole of the service line. But even apart from the question of justification for that claim, it is doubtful whether that claim embodied in a note to the conditions of supply can bind the consumer. The agreement between the licensee and the consumer is embodied in a written document which is presumably in the form of Annexure 'E'. The terms of that form do not appear to bind the consumer to accept the conditions of supply. That is to say, the consumer, although he has entered into an agreement with company, has not agreed that the service line shall be the licensee's property. Further, the consumer in this case is presumably Government and it is a doubtful question how far Government is bound by a any provision which is not incorporated in the written agreement between the parties.

4. The Inspector General of Prisons makes the point that this service line has never been used and has never come under the control of the Company. But looking to the definition of 'service-line' in section 2(1) of the Act, there does not seem much force in that contention..

"Service-line" means any electric supply-line through which energy is, <u>or is intended to be,</u> supplied by a licensee."

5. Even if it be held that the service-line other than the hundred foot line paid for by the Company, is the consumer' property, it appears doubtful if the consumer could remove the line in the event of the licensee refusing to dismantle and and removeit. Certainly, as regards that portion of the line outside, his own property he would appear to have no such right.

6. Legally the position is rather a tangle, If the P.W.D. considered the legal points involved of sufficient, Government might consider filing a suit, although no assurance of success could in the circumstances be given. But, first Government might inform the Company that they have no objection if the conditions of supply be relaxed on this occassion so as to allow the Company to remove the line and treat it as the consumer's property in this particular case. A reduced price might induce the Company to agree. Government is concerned in this matter in two ways: first as the consumer and secondly as the authority which has sanctioned the conditions of supply. The Inspector General of Prisons represents Government only in its capacity of consumer. If Government enters into negotiations with the Company to relax the conditions of supply in this particular case the negotiations should be conducted by Government and not the Inspector General of Prisons.

Id/- P.N.M.

15-10

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 8358, dated the 15th October 1945.

Office of the R.L.A.

The points at issue between the petitioners and the Company are not quite clear. The petitioners'x argument regardi the minimum charge appears to be that the minimum charge of Rs.3/- is for the combination of both uses of the energy i.e. both lighting and power purposes. Therefore if a consumer makes only one use of the energy, the minimum in x his case must be less than Rs.3/-. There is no substance in that argument. It is clear from the Second Annexure to the Nadiad Electric License, 1929 that the Company is entitled to charge to the consumers a minimum monthly charge of Rs. 3/- for either use. The point whether the company can impose two minimum charges on the consumer for both uses of the energy, is not clearly raised in this case and it does not seem necessary to deal with it for the purpose of answering the petition.

Id/- P.N.M.
10/2

Remembrancer of Legal Affirs.

U.R. to P.W.D., No. 9696, dated the 11th December 1942.

PSM. 1-5

S.A.S.

I agree.

Sub-section (3) of section 21 of the Indian Electricity Act, 1910 empowers Govt. to Cancel any condition or part of a condition sanctioned under sub-section(2) . Power to cancel any condition or part of condition does not include power to modify or amend any such condition. It would not be competent for Govt. to reduce the Miscellaneous-Charges levied by the Hubli Electric Company with the previous sanction of Govt. under the sub-section(2). The views taken by the P.W.D. at p. 28 ante incorrect Perhaps a threat to cancel would induce the Company to modify.

Id/- R.T.K.
9-12

Sd/- 9/12

A.L.R.

I agree Reply may be as S.A.S.'s note

Id/- P.S.R.
10/12

Id/- P.N.M.
10/12.

Remembrancer of Legal Affairs.

Submitted.

2. The Poona Electric Supply Company has demanded a sum of Rs. 80/- from the Executive Engineer, Poona Division on account of damage caused to the electric meter installed by them in bungalow No. 12, Queens Gardens, Poona and then occupied by Mr. V.S.Bhide, I.C.S. The meter was found to be without a cover and the registration dial had been removed. The opn Co. was requested to settle the claim with Mr. Bhide but the company replied that as instructions to connect or disconnect the installations were received from the Sub-Divisional Officer, Electric Sub-Division, they could not recover the amount from Mr. Bhide. The Electric Engineer to whom the papers were shown is of the view that the liability of the consumer will be governed by the terms of agreement entered into for the hire under section 26(1) of the Indian Electricity Act, 1910 and in the absence of an agreement it would depend on the facts, firstly, whether the meter installed on the consumer's premises can be deemed to be under his control and secondly, whether there was any contributory negligence on the part of the consumer which resulted in damage to the meter. The question raised by the P.W.D. for the consideration of the H.L.A. is whether liability for damage to the meter should be accepted by Government.

PDN. 1-5

Opinion of the R.L.A.

R.L.A. agrees that this is a matter between the Company and Mr. Hills and Government should not accept any liability.

Sd/- P.N.H.

21-2

Commissioner of Legal Affairs.

U.R. to P.W.D., No. 10171 dated the 22nd December 1942.

PEM: 1/3

Office of the R.L.A.

It appears that Mr. H.R.Shikhare, proprietor of Sundarshan Talkies, Hubli, is receiving from the Hubli Electricity Company Ltd., a supply of energy for his premises having a separate supply and does not agree to pay to the Company the minimum charges fixed by it. The company has applied to Government to nominate under section 52 of the Indian Electricity Act, IO 1910, any person to arbitrate and determine the matter in dispute. In its office note at page 4 ante the P.W.D. observes:

"If the other party (i.e.Mr. H.R.Shikhare) is is not willing to pay the charges as demanded by the licensee for the supply, it seems that it has either to submit to the arbitration or run the risk of supply being discontinued by the licensee".

The question for the consideration of the R.L.A. is whether the view taken by the P.W.D. is correct.

2. The proviso to section 22 of the Indian Electricity Act, 1910, enacts that no person shall be entitled to demand or to continue to receive from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to to him such minimum annual sum as will give him a reasonable return on the capital expenditure and will cover other outstanding charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration. It is clear from this provision that Mr. H.R.Shikhare cannot continue to receive the supply of energy unless he agrees to pay the minimum annual sum demanded by the Company or the sum to be determined in case of dispute or difference by arbitration. Since he does not now agrees to pay the minimum annual sum demanded by the Company, he will have to agree to pay the sum to be determined by arbitration; otherwise he will not be entitled to continue to receive the supply. If he is unwilling to submit to arbitration it means that he does not agree to pay to the Company the sum determin/-able by arbitration, in which case the Company be entitled to discon/-tinue the supply. The view taken by the P.W.D. is therefore correct.

Id/- P.H.M.
28/10

Remembrancer of Legal Affairs.

P&M. 2/5

U.R. to P.W.D. No. 8757 dated the 29th October 1942.